

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Che Swyden Chereskin on March 31, 2010

**The application has been amended as follows:**

Claims 21 and 23 have been cancelled.

Claims 1, 8, 20 and 22 have been amended to read:

Claim 1. An assay for detecting and identifying one or more bacteria in a sample, wherein said assay comprises detecting the presence or absence of at least two conserved molecular markers in the sample, thereby identifying one or more bacteria, wherein at least one molecular marker is conserved in Gram-positive bacteria and consists of SEQ ID NO: 14, and at least one molecular marker is conserved in Gram-negative bacteria and consists of SEQ ID NO: 230.

Claim 8. A method for diagnosing bacterial infection of a sample comprising screening the sample for the presence of at least two conserved molecular markers and diagnosing bacterial infection based on the presence of the at least two conserved molecular markers, wherein at least one molecular marker is conserved in Gram-positive bacteria and consists of SEQ ID NO: 14, and at least one molecular marker is conserved in Gram-negative bacteria and consists of SEQ ID NO: 230.

Claim 20. An assay for detecting and identifying *Bacillus anthracis* in a sample, wherein said assay comprises detecting the presence or absence of a conserved molecular marker in the sample, thereby identifying *Bacillus anthracis*, wherein said molecular marker consists of SEQ ID NO 14.

Claim 22. An assay for detecting and identifying *Francisella tularensis* in a sample, wherein said assay comprises detecting the presence or absence of a conserved molecular marker in the sample, thereby identifying *Francisella tularensis*, wherein said molecular marker consists of SEQ ID NO 230.

The following claims have been added:

Claim 24. The method of claim 1, wherein the method further comprises detecting an additional molecular marker that is conserved in Gram-positive bacteria and which is selected from the group consisting of the sequences of SEQ ID NOs: 1-13, 15-62, and 326-359, and/or detecting an additional molecular marker that is conserved in Gram-negative bacteria and which is selected from the group consisting of SEQ ID NOs: 194-229, 231-232, 238-239, 242-254 and 431-442.

Claim 25. The method of claim 8, wherein the method further comprises detecting an additional molecular marker that is conserved in Gram-positive bacteria and which is selected from the group consisting of the sequences of SEQ ID NOs: 1-13, 15-62, and 326-359, and/or detecting an additional molecular marker that is conserved in Gram-negative bacteria and which is selected from the group consisting of SEQ ID NOs: 194-229, 231-232, 238-239, 242-254 and 431-442.

### EXAMINER'S COMMENT

The subject matter of the subcombination of the elected probes of SEQ ID NO: 14 and 230 has been rejoined with the non-elected probes of SEQ ID NO: 1-13, 15-62, 326-359 and of SEQ ID NO: 194-229, 231-232, 238-239, 242-254 and 431-442. Thereby, the restriction requirement of February 19, 2009, as it pertained to the combination of SEQ ID NO: 14 and 230, together with one or more of SEQ ID NO: 1-13, 15-62, 326-359 and SEQ ID NO: 194-229, 231-232, 238-239, 242-254 and 431-442 is hereby withdrawn.

In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carla Myers whose telephone number is 571-272-0747. The examiner can normally be reached on Monday-Thursday (6:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Nguyen can be reached on 571-272-0731. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Carla Myers/

Primary Examiner, Art Unit 1634